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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/028,872

12/21/2001

Donald J. Archuleta

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08/11/2004

DogsBreath Patent Agency

Attn: E. L. Miller

3512 Chestnut Ave.

Loveland, CO 80538

EXAMINER

MATHEW, FENN C

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/028,872

Applicant(s)

ARCHULETA, DONALD J.

Examiner

Fenn C Mathew

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 6-8, and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Muchnick (U.S. 3,953,030). Referring to claim 1, Muchnick discloses a glove, a compressible resilient object, of a size and shape grippable by the fingers of the hand, and a fastener that affixes the compressible and resilient object against the glove proximate the palm of the hand.
3. Referring to claim 6, Muchnick discloses patches of hook and loop material affixed to the compressible and resilient object, and the other affixed to the palm of the glove.
4. Referring to claim 8, Muchnick discloses the compressible resilient object removably fastened to the glove.
5. Referring to claims 15-16, Muchnick discloses the structural limitations. The claimed method steps are inherently performed as a ball is thrown to a user wearing the

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glove, with the user catching the ball against the palm, and clenching the fingers around the ball in order to further secure it against the palm.

6. Claims 1 and 7 rejected under 35 U.S.C. 102(b) as being anticipated by Nee (U.S. 5,335,916). Referring to claim 1, Nee discloses a glove, a compressible resilient object, of a size and shape grippable by the fingers of the hand, and a fastener that affixes the compressible and resilient object against the glove proximate the palm of the hand.

7. Referring to claim 7, Nee discloses a leather glove with the tips of the thumb and finger portions absent.

8. Claims 1 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Cherry (U.S. 4,089,070). Referring to claim 1, Cherry discloses a glove, a compressible resilient object, of a size and shape grippable by the fingers of the hand, and a fastener that affixes the compressible and resilient object against the glove proximate the palm of the hand.

9. Referring to claims 9-10, Cherry discloses the resilient object permanently attached to the glove by way of adhesive. (Taken in its broadest reasonable interpretation.)

10. Claims 11, 12, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Schwartz (U.S. 4,993,707). Referring to claim 11, Schwartz discloses a first and second loop of elastic material, a compressible and resilient object fastened to the first and second loops.

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11. Referring to claim 12, Schwartz discloses the object removably fastened to the first and second elastic loops.

12. Referring to claim 14, Schwartz discloses the object being a basketball. (It is notoriously old and well known that basketballs may be made of rubber).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muchnick. Muchnick has disclosed the claimed invention above with the exception of specific material and size configurations. Muchnick has disclosed a compressible ball roughly the size of a baseball. The specific materials used or specific shore hardness would be considered a matter of simple design choice as numerous materials may be substituted without affecting performance of the device. It would have been obvious to one having ordinary skill in the art at the time of invention to provide the ball of Muchnick with the specified configurations as an art recognized alternative absent unexpected or undesired results.

15. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schwartz. Schwartz discloses the claimed invention except for the feature of the elastic cords permanently attached to the resilient object. It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to have the cords permanently attached since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 93 USPQ 23 (CCPA 1952).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Brassil U.S. 6,454,681

Jimenez U.S. 6,634,970

Courtney U.S. 3,547,112

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C Mathew whose telephone number is (703) 305-2846. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YCM

fcm

July 29, 2004



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